STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

LAZ PARKING LTD, LLC Petitioner, and COMMONWEALTH EDISON COMPANY Respondent.	)	Docket No. 12-0324

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO RECONSIDER ALJ RULING OF FEBRUARY 13, 2014

LAZ Parking LTD, LLC ("LAZ Parking"), for its Response (this "Response") to Respondent Commonwealth Edison Company's ("ComEd") Motion to Reconsider the ALJ Ruling of February 13, 2014 (the "Motion to Reconsider"), states as follows:

I. Background

On May 2, 2012, LAZ Parking filed its complaint against ComEd to recover approximately $259,938 wrongfully back billed to LAZ Parking by ComEd. ComEd claimed that LAZ parking had been billed with an incorrect meter constant, resulting in alleged under-billing of LAZ Parking's account. (Complaint, Exhibit D). However, ComEd failed to comply with the accuracy and testing requirements set forth in the rules of the Illinois Commerce Commission (the "Commission"), and therefore ComEd's adjustment of its bills to LAZ Parking is unlawful

under 83 Ill. Adm. Code Section 410.200(h)(1). (Complaint, Count II).

LAZ Parking served ComEd with discovery in July 2012. LAZ Parking had issues with ComEd's responses to discovery, and from August through October 2012, pursuant to S. Ct. Rule 201(k)[1] and Commission Rule 200.350 LAZ Parking repeatedly requested ComEd to schedule a telephone conference to discuss these discovery issues. ComEd uniformly ignored each of these requests. (LAZ Parking's Reply in Support of Motion to Deem Admitted, Exhibits A through D).

On October 5, 2012, LAZ Parking served ComEd with its First Set of Requests for Admission (the "Requests for Admission"), a copy of which is attached as Exhibit A to this Response. The Requests for Admission expressly state that they are issued pursuant to S. Ct. Rule 216 and contain two other citations to that rule. *See* Exhibit A to this Response.

On October 31, 2012, ComEd served on LAZ Parking its responses to the Requests for Admission, a copy of which is attached as Exhibit B to this Response. On November 12, 2012, LAZ Parking filed its Motion to Deem Admitted Certain Facts Pursuant to Requests for Admission and Responses Thereto (the "Motion to Deem Admitted").

ComEd finally conferred with LAZ Parking by telephone regarding discovery issues on November 16, 2012, after LAZ Parking filed the Motion to Deem Admitted. ComEd filed its Response in Opposition to LAZ Parking's Motion to Deem Admitted on December 17, 2012 (the "ComEd Response to Motion to Deem Admitted"), and oral argument on the Motion to Deem Admitted was held on June 28, 2013.

On February 13, 2014, the Administrative Law Judge (the "ALJ") issued a ruling granting LAZ Parking's Motion to Deem Admitted. On February 27, 2014, ComEd filed its Motion to

[1]Illinois Supreme Court Rules are herein referred to as "S. Ct. Rules," and the Commission's Rules of Procedure, 83 Ill. Adm. Code Part 200, are herein referred to as "Commission Rules."

Reconsider.

II. Introduction

The purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence that was not available at the time of hearing, changes in the law, or errors in the court's previous application of existing law. *Caywood v. Gossett*, 382 Ill. App. 3d 124, 133, *app. denied*, 229 Ill. 2d 619 (2008). ComEd's Motion to Reconsider does none of these. Rather, it merely parrots the same argument ComEd made in its Response to the Motion to Deem Admitted and at oral argument on June 28, 2013.

ComEd's Motion to Reconsider boils down to a single argument: ComEd thinks S. Ct. Rule 216 doesn't apply to Commission proceedings. ComEd packages its one argument in different ways, from prophesying regulatory Armageddon if the ALJ's ruling stands (Motion to Reconsider, pgs. 1-4), to discoursing on the canons of statutory construction (some with Latin names, even). (Motion to Reconsider, pgs. 5, 8). No matter how ComEd wraps its argument, though, it still does not bear the slightest scrutiny.

None of ComEd's denials were made pursuant to a sworn statement as required by S. Ct. Rule 216, and ComEd's responses generally purported to combine both objections and denials. S. Ct. Rule 216(c) clearly and expressly provides that requests are deemed admitted unless within 28 days of service the party on whom the request to admit is served either admits the fact requested or provides a sworn statement denying specifically the matter of which admission is requested, or provides written objections on proper legal grounds.

ComEd's responses to the Requests for Admission failed to comply with the most fundamental requirements of S. Ct. Rule 216. Failure to provide the sworn statement of a party purporting to deny a requested admission within the required 28 days is fatal. *Z Financial, LLC v.*

ALSJ, Inc.(In re County Treasurer), 2012 Ill. App. LEXIS 683 (Ill. App. Ct. 1st Dist. 2012). S. Ct. Rule 216 requires that a request be either answered or objected to, but a party may not both answer and object simultaneously to the same matter. *City of Chicago ex rel. Schools v. Schorsch Realty Co.*, 95 Ill. App. 2d 264, 279-280 (1st Dist. 1968); *app. after remand*, 127 Ill. App. 2d 51 (1971); *cert. denied*, 402 U.S. 908 (1971). "The rules [the Supreme Court has] promulgated are not aspirational. They are not suggestions. They have the force of law, and the presumption must be that they will be obeyed and enforced as written." *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995).

III. Commission Rule 200.360(c) is Clear and Unambiguous: S. Ct. Rule 216 Applies to Commission Proceedings

Despite ComEd's ludicrous contention to the contrary, not only has the Commission in its Rules of Procedure expressly adopted the discovery tools available to litigants in civil actions in Illinois circuit courts, the Commission has specified that those discovery tools are to be used in the manner contemplated by the Code of Civil Procedure and the Rules of the Supreme Court of Illinois:

> In addition to depositions, and subject to the provisions of this Part, any party may utilize written interrogatories to other parties, requests for discovery or inspection of documents or property **and other discovery tools commonly utilized in civil actions in the Circuit Courts of the State of Illinois in the manner contemplated by the Code of Civil Procedure and the Rules of the Supreme Court of Illinois**.
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> Commission Rule 200.360(c) (emphasis added).

The essential point is one that ComEd is determined to miss: In adopting Commission Rule 200.360(c), the Commission made all discovery tools commonly used in the circuit courts available for use in Commission proceedings in the manner contemplated by the Illinois Code of Civil Procedure and the Rules of the Illinois Supreme Court. These discovery methods include

requests for admission under S. Ct. Rule 216.

Indeed, Commission Rule 200.360(c) itself renders meritless, if not risible, ComEd's contention that the ALJ's grant of the Motion to Deem Admitted is unprecedented (Motion to Reconsider, pgs. 2, 3, 4 and 10), and that the ruling will somehow undermine all future Commission proceedings. (Motion to Reconsider, pg. 1). LAZ Parking issued the Requests for Admission in precisely the manner contemplated by the discovery rules of the Code of Civil Procedure and the Illinois Supreme Court Rules. The ALJ's order granting the Motion to Deem Admitted is authorized by, and entirely consonant with, Commission Rule 200.360(c). The Motion to Reconsider must therefore be denied.

IV. The Illinois Supreme Court Has Definitively Declared Requests for Admission To Be Discovery Methods

ComEd breathes its best on the spark of its dead argument by claiming that an S. Ct. Rule 216 request for admission is not a discovery tool. (Motion to Reconsider, page 5). But ComEd is merely trying to sow doubt where none exists. To the extent there ever was any doubt in the past, the Illinois Supreme Court definitively resolved it in 1995 by holding that requests for admission are discovery tools. *Bright v. Dicke*, 166 Ill. 2d 204, 208 (1995). The Illinois Supreme Court then reconfirmed that requests for admission are discovery tools in *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334 (2007):

> In light of our holding in *Bright*, we must necessarily reject defendants' assertion that we, in our subsequent decision in *P.R.S. International, Inc. v. Shred Pax Corp.*, 184 Ill. 2d 224, 703 N.E.2d 71, 234 Ill. Dec. 459 (1998), distanced ourselves from *Bright* by holding that requests to admit are not part of the discovery process. Initially, **defendants ignore that immediately after we announced our decision in Bright, we amended our Rule 201--entitled "General Discovery Provisions"**--which vests trial courts with broad powers to supervise the discovery process in order to prevent abuse (166 Ill. 2d R. 201). **Specifically, we amended subsection (a) of Rule 201 to include requests to admit within the**

> **definition of "discovery methods." 166 Ill. 2d R. 201(a). This amendment clearly reinforced our statement in *Bright* that requests for admission are part of the discovery process.** *Bright*, 166 Ill. 2d at 208.
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> *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d at 345 (Ill. 2007) (emphasis added).

In 1995, following the decision in *Bright*, the Illinois Supreme Court amended S. Ct. Rule 201 to read as follows:

> Rule 201. General **Discovery** Provisions
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> (a) **Discovery Methods**. Information is obtainable as provided in these rules through any of **the following discovery methods**: depositions upon oral examination or written questions, written interrogatories to parties, discovery of documents, objects or tangible things, inspection of real estate, **requests to admit** and physical and mental examination of persons. Duplication of discovery methods to obtain the same information should be avoided.
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> Ill. S. Ct Rule 201(a) (emphasis added).

In ComEd's absurd view, a request for admissions is a discovery method in circuit court cases, but it ceases to be a discovery method once someone initiates a Commission proceeding, Commission Rule 200.360(c) to the contrary notwithstanding. (Motion to Reconsider, pgs. 5-6).

ComEd criticizes LAZ Parking for its "misplaced reliance" on *Vision Point of Sale* and *Bright*. (Motion to Reconsider, pgs. 5-6). According to ComEd, LAZ Parking may not rely on *Vision Point* or *Bright* because

> [t]hese cases are appeals from civil trial court proceedings, and therefore all of the Illinois Supreme Court Rules and the entire Illinois Code of Civil Procedure applied to the cases at hand. Consequently, both the *Vision Point* and *Bright* Courts presupposed the application of Illinois Supreme Court Rule 183 (allowing for extensions of time) and, in *Vision Point*, Illinois Supreme Court Rule 201 (vesting the court with broad powers to

supervise the discovery process).

Motion to Reconsider, pg. 6.

Thus, according to ComEd, *Vision Point*, *Bright* and S. Ct. Rule 183 are not within the scope of "Commission law" (Motion to Reconsider, pg. 6), a term that for ComEd is best left nebulous and undefined..

Yet ComEd has no hesitation citing *Vision Point* in support of its own request that ComEd should be allowed to amend its responses to the Requests for Admission, or that it should be allowed to characterize this relief as an S. Ct. Rule 183 request for additional time to respond.[2] (Motion to Reconsider, pgs. 9-10). Thus, if ComEd cites a case or Illinois Supreme Court Rule, then it's "Commission law," but if LAZ Parking cites the same case or rule, it isn't.[3] ComEd's heads-I-win, tails-you-lose approach to precedent and procedure before the Commission underscores the thoroughness with which it discredits its own argument.

The Commission should decline ComEd's invitation to both overrule the Illinois Supreme Court and violate Commission Rule 200.360(c) by declaring that requests for admission are not discovery tools available for use in Commission proceedings.[4] The Commission must

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[2]*See also*, ComEd Response to Motion to Deem Admitted, pg. 7. Nor does ComEd explain why *Six Brothers King Drive Supermarket, Inc. v. Dept. of Revenue*, 192 Ill. App. 3d 976 (1st Dist. 1989) (Motion to Reconsider, pg. 9), a tax case, is within the scope of its unstated definition of "Commission law," and, if not, why ComEd cites it as authority in its brief.

[3]"'When I use a word,' Humpty Dumpty said in rather a scornful tone, 'it means just what I choose it to mean — neither more nor less.'" *Through the Looking Glass and What Alice Found There*, by Lewis Carroll, in *The Annotated Alice*, at pg. 213 (W.W. Norton, 2000).

[4]In arguing that the Commission could not have considered *Vision Point* (2007) or *Bright* (1995) when it adopted its Rules of Practice (9 Ill. Reg. 5627, 1985), ComEd simply jumbles up its dates. Commission Rule 200.360 was amended in 2000 (24 Ill. Reg. 16019), five years after both *Bright* and the 1995 amendments to S. Ct. Rule 201 quoted above. Thus, when the Commission last amended Commission Rule 200.360, discovery methods under the Illinois Supreme Court Rules expressly included requests for admission under S. Ct. Rule 216. Had the Commission wished to exclude requests for admission under S. Ct. Rule 216 from discovery methods authorized in Commission proceedings,

therefore deny the Motion to Reconsider.

V. ComEd's Statutory Construction Arguments Are Irrelevant and Inapplicable to Commission Rule 200.360(c)

ComEd next tries to apply "basic concepts of statutory construction" to Commission Rule 200.360(c) to show that requests for admission are not "discovery tools." (Motion to Reconsider, pgs. 5-9). But basic concepts of statutory construction lead to a conclusion directly opposite to the one ComEd urges in its Motion to Reconsider.

The first principle of statutory construction, which ComEd neglects to mention, is that when statutory language is plain and unambiguous and conveys a clear and definite meaning there is neither necessity nor authority for resorting to statutory construction. *Sup v. Cervenka*, 331 Ill. 459, 461-462 (Ill. 1928); *People v. Marshall*, 242 Ill. 2d 285, 292 (2011). The Illinois Supreme Court has made this clear:

> It is a primary rule in the interpretation and construction of statutes that the intention of the legislature should be ascertained and given effect. [Citations omitted.] This is to be done primarily from a consideration of the legislative language itself, which affords the best means of its exposition, and if the legislative intent can be ascertained therefrom it must prevail and will be given effect **without resorting to other aids for construction. [Citations omitted.] There is no rule of construction which authorizes a court to declare that the legislature did not mean what the plain language of the statute imports.** [Citations omitted.]
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> *Western Nat'l Bank v. Kildeer*, 19 Ill. 2d 342, 350 (1960) (emphasis added).

Before ComEd can apply any concept of statutory construction to Commission Rule 200.360(c), it must first show that that rule's language is unclear or ambiguous. But ComEd

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it could have done so at that time. It didn't.

doesn't even make this argument, and if it did it couldn't carry the burden of persuasion. The Commission's language and intention in Commission Rule 200.360(c) could be neither more clear nor more unambiguous: discovery tools commonly used in civil actions in the Illinois Circuit Courts may be used in Commission proceedings in the same manner as contemplated by the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules. Because there is nothing unclear or ambiguous about the Commission's intent in Commissin Rule 200.360(c), the Commission does not reach any issue concerning the construction or interpretation of that rule.

VI. ComEd Lacks "Good Cause" For Its Alternative Request for Relief

ComEd claims that it has "good cause" for the Commission to exercise its discretion under S. Ct. Rule 183[5] and allow ComEd to re-issue its responses to the Requests for Admission. (Motion to Reconsider, pg. 10). But ComEd has already torpedoed its own claim for relief under that rule by admitting on the record the reasons it failed to conform its responses to the Requests for Admission to S. Ct. Rule 216:

- ComEd determined (wrongly) that S. Ct. Rule 216 did not apply to Commission proceedings. (Motion to Reconsider, pgs. 1-9; ComEd Response to Motion to Deem Admitted, pgs. 8-10).
- ComEd believed (wrongly) that requests for admission are not discovery tools. (Motion to Reconsider, pgs. 5-9; ComEd Response to Motion to Deem Admitted, pgs. 4-5).
- ComEd determined (wrongly) that the requests for admission were governed solely by

[5]ComEd cites no authority for the proposition that the Commission has adopted S. Ct. Rule 183, yet it argues that it should benefit from the application of that rule in this case. ComEd fails to explain how it can reconcile this argument with the first nine pages of its Motion to Reconsider, in which it takes the position that S. Ct. Rule 216 doesn't apply in Commission proceedings because ComEd thinks the Commission never adopted it (Motion to Reconsider, pgs. 1-9). As LAZ Parking stated previously, ComEd would have Illinois Supreme Court Rules apply, but only to the extent they do not inconvenience ComEd. (Transcript, Oral Argument, June 28, 2013, pg. 42, lines 1-7).

Commission Rules 200.300 through 200.430 (ComEd Response to Motion to Deem Admitted, pgs. 2-5).

- ComEd determined (wrongly) that requests for admission could not be issued without a prehearing conference called under Commission Rule 200.300, and even then they required approval of the Administrative Law Judge before they could be used. (ComEd Response to Motion to Deem Admitted, pgs. 4-8).

These are hardly technical or inadvertent mistakes of the type contemplated by Vision Point. Rather, these are products of ComEd's in-depth reading of the Commission Rules and its considered legal reasoning, and therefore they do not constitute "good cause" under S. Ct. Rule 183. ComEd evidently concluded that its reasoning was sound and correct because it timely served its responses to the Requests for Admission and never once raised a question, much less an objection, to their issuance under S. Ct. Rule 216. These are not technical issues, they are major errors in reading and applying the law, and *Vision Point* is of no help to ComEd. Therefore, ComEd's request for alternative relief in the Motion to Reconsider must also be denied.

VII. Conclusion

With regard to whether S. Ct. Rule 216 applies in Commission proceedings, the foregoing shows that Under Commission Rule 200.360(c), the Commission adopted discovery methods available in Illinois circuit courts, one of which is S. Ct. Rule 216 requests for admission, and those methods are to be used in the same manner as contemplated by the Rules of the Illinois Supreme Court.

ComEd has shown no grounds on which it would be entitled to reconsideration of the

ALJ's February 13, 2014 Order, and therefore its Motion to Reconsider must be denied in its entirety.

Dated this 27th day of March, 2014

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